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P.O. Box 2301  
Cincinnati, Ohio 45201-2301

June 18, 2001

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**JUN 18 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Office of the Secretary  
445-12<sup>th</sup> Street, SW  
TW-A225  
Washington, D.C. 20554

**RE:** Cincinnati Bell Telephone's Comments to CompTel Petition for Rulemaking,  
RM No. 10131, CCB/CPD 01-12

Dear Ms. Salas:

Enclosed are an original and four copies of Cincinnati Bell Telephone's Comments to the Petition for Rulemaking filed by the Competitive Telecommunications Association ("CompTel"). A duplicate original copy of this letter is enclosed; please date stamp this copy as acknowledgement of its receipt and return it. Questions regarding this filing may be directed to me at the above address or by telephone at (513) 397-7260.

Sincerely,

A handwritten signature in cursive script that reads "Jollett Kinney".

Jollett Kinney  
Analyst, Regulatory Affairs

Enclosures

No. of Copies rec'd 014  
List A B C D E

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Petition for Rulemaking Regarding  
Presubscribed Interexchange Carrier Changes

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CCB/CPD 01-12

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

Christopher J. Wilson  
Attorney for Cincinnati Bell Telephone  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**In the Matter of**

**Petition for Rulemaking Regarding  
Presubscribed Interexchange Carrier Changes**

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**RM No. 10131**

**CCB/CPD 01-12**

**COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY**

Cincinnati Bell Telephone Company ("CBT") submits these comments in response to the Petition for Rulemaking filed by the Competitive Telecommunications Association ("CompTel") on May 16, 2001, and pursuant to the Public Notice issued by the Commission on May 25, 2001.<sup>1</sup> The Public Notice seeks comment on CompTel's petition requesting that the Commission initiate a rulemaking proceeding to revise its policies governing the federally tariffed charges of incumbent local exchange carriers ("ILECs") for changing the presubscribed interexchange carrier ("PIC") for end-user subscribers. More specifically, CompTel requests that the Commission eliminate the \$5 "safe harbor" for PIC change charges and require ILECs to provide detailed cost support with any tariff filing setting forth a PIC change charge in excess of \$1.49.<sup>2</sup>

**BACKGROUND**

CBT is an independent, mid-size local exchange carrier with its headquarters in Cincinnati, Ohio. CBT's serves customers throughout the greater Cincinnati metropolitan area, including portions of Northern Kentucky and a small number of customers in Indiana. CBT is a wholly owned subsidiary of Broadwing Inc. (formerly Cincinnati Bell Inc.).

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<sup>1</sup> See CompTel Petition for Rulemaking filed May 16, 2001; CompTel files Petition for Rulemaking Re: Presubscribed Interexchange Carrier Charges, Public Notice, DA 01-1299, RM No. 10131, released May 25, 2001.

## DISCUSSION

While CompTel asserts that it is responding to the Commission's "invitation" to initiate a rulemaking to reevaluate the Commission's policies toward PIC change charges, CBT submits that CompTel's petition should be denied for several reasons. First, CompTel fails to present any direct evidence that a PIC change charge of \$5 is unreasonable or exceeds carriers' costs to process a PIC change. Instead, CompTel relies entirely on unsubstantiated conclusions drawn from the fact that BellSouth charges less than \$5 for a PIC change as well as from the increased automation of PIC change processing in recent years. Second, CompTel has failed to present any evidence that the \$5 charge has any bearing on long distance rates or customers' habits with regard to changing their PIC. Finally, CompTel does not present sufficient facts to indicate that the circumstances within the long distance market have changed such that the Commission's findings in the May 2000 Memorandum Opinion and Order on this issue should be reversed.<sup>3</sup> For these reasons, discussed further below, CBT urges the Commission to deny CompTel's request that the Commission revisit its PIC change charge policy at this time.

**1. CompTel has failed to produce direct evidence that the a PIC change charge is unreasonable or exceeds carriers' costs**

CompTel argues that the current \$5 "safe harbor" should be eliminated because, as CompTel speculates, a \$5 PIC change charge is "well in excess of [the] cost" that ILECs incur processing PIC changes and is, therefore, unreasonable.<sup>4</sup>

In support of this position, CompTel points to the fact that PIC change processing has become increasingly automated during recent years.<sup>5</sup> CBT does not dispute the fact that PIC

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<sup>2</sup> See CompTel Petition at 1 & 9.

<sup>3</sup> MCI Telecommunications Corporation v. U S West Communications, Inc. et. al., 15 FCC Rcd 9328, *Memorandum Opinion and Order*, rel. May 18, 2000. ("MCI Order")

<sup>4</sup> CompTel Petition at 5.

<sup>5</sup> Id. at 5 and 8.

change processing has become more automated. CBT objects, however, to the contention that such automation has resulted in its \$5 PIC change charge being “well in excess of cost.”<sup>6</sup> First, it is not necessarily the case that the automated process completely obviates the need for manual intervention. In order for a PIC change request to flow through the Customer Account Record Exchange (“CARE”) systems uninterrupted, the submitting interexchange carrier (“IXC”) must accurately populate the record fields interpreted by the CARE system. Although the PIC change requests for most residential and simple business lines are accurate and do flow through the CARE system uninterrupted, the fact remains that many do not and do require manual processing. In addition, the CompTel petition fails to account for the more complicated types of PIC change requests, e.g. for Centrex, ISDN-BRI and ISDN-PRI, that do not flow through the automated CARE system. In fact, CBT incurs the costs of manually processing these more complicated requests, often at several separate phases of the ordering process, and accounts for these costs in establishing a single, indiscriminately applied PIC change charge for all PIC changes. Indeed, as the Commission noted in the MCI Order: “Even if we were to require the LECs to lower their PIC-change charge to more adequately reflect their costs, there is no guarantee that today’s costs have dropped below \$5 *in all instances*” (emphasis added).<sup>7</sup>

CompTel also bases its attack on the existing \$5 PIC change charge safe harbor on the fact that BellSouth currently charges only \$1.49.<sup>8</sup> Although CompTel presents no evidence to support its claim, CompTel incorrectly assumes that if one carrier’s costs are \$1.49 then most other carriers’ costs must be close to \$1.49. This assumption is inappropriate. The cost that each ILEC bears in processing PIC change requests is relative not only to the size of the local exchange market but also to the degree of competition among long distance carriers in that

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<sup>6</sup> Id. at 9.

<sup>7</sup> MCI Order at note 26.

<sup>8</sup> CompTel petition at 9.

market. This is particularly true as it relates to the smaller carriers such as CBT. In fact, the Commission has often acknowledged that there are differences in costs between different size carriers. Interestingly, the very rules CompTel cites in footnote 8, section 61.3(qq)(1) and (3), to identify the companies to include under the \$1.49 rate recognize the differences in costs among carriers. The Commission, in establishing the multi-tier “target rate” in the CALLS Order, found that such a distinction “addresses the reality of a diverse LEC population” and recognized that the smaller carriers do not have the same economies of scale and broad subscriber bases as the Regional Bell Operating Companies.<sup>9</sup> CompTel arbitrarily suggests, however, that the Commission group together the largest carriers with one of the other groups of smaller companies.<sup>10</sup> It is disingenuous for CompTel to suggest that a carrier like CBT, having just over one million access lines, has the same costs as a carrier like BellSouth that is more than 20 times CBT’s size. A PIC change charge of \$1.49 simply does not recognize these differences and would not allow CBT to recover its costs of processing PIC change requests.

CBT also posits that the cost of processing PIC change charges is attributable to the level of long distance competition in a particular market. A particular ILEC may be inundated with large numbers of PIC change requests or with very few requests, either from IXCs or directly from consumers, depending on the strength of the IXCs’ marketing campaigns in that ILEC territory as well as the value of the rate plans offered to customers. Contrary to CompTel’s assumption that all carriers’ costs should be the same, it stands to reason that as the volume of

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<sup>9</sup> *Sixth Report and Order* in CC Docket No. 96-262 and 94-1, *Report and Order* in CC Docket No. 99-249, *Eleventh Report and Order* in CC Docket No. 96-45, the CALLS Order, FCC 00-193 (rel. May 31, 2000) at paragraph 177.

<sup>10</sup> CBT also notes that CompTel’s characterization of the carriers subject to the 61.3(qq)(3) target rate as mid-size price cap companies while the companies subject to the 61.3(qq)(2) rate are small is incorrect. The distinction between these categories was not based on size but rather on the rural versus non-rural nature of the companies. While a difference in the access charge target rate of the non-RBOC price cap carriers is appropriate, the rural versus non-rural nature of a carrier should not be significant for PIC change costs. The relevant distinction for the PIC change is size. Thus, CompTel’s arbitrary grouping of the 61.3(qq) (3) carriers with the RBOCs rather than the 61.3(qq) (2) carriers is inappropriate.

PIC change requests varies among ILECs, the costs of processing those requests may vary as well.

**2. CompTel has failed to present any evidence that the \$5 charge has any bearing on long distance rates or the level of long distance competition**

Aside from the speculative statements made in its petition, CompTel does not present any evidence to support its claims that \$5 PIC change charges “translate directly into higher long distance rates” or have the effect of “suppressing demand for long distance service.”<sup>11</sup> The fact is that today’s per-minute long distance rates are lower than ever before and there is significant competition in the long distance market. According to information found at the Telecommunications Research and Action Center’s website, there are long distance carriers with rate plans as low as 3¢ per minute.<sup>12</sup> With such low rates, it is difficult to imagine how CompTel’s proposition can withstand scrutiny in the face of steadily declining per-minute rates over the last several years. Additionally, the Commission should note CompTel’s failure to produce evidence or even to suggest that there is significantly more competition in those regions where the PIC change charge is lower than \$5.

Moreover, contrary to CompTel’s position, the mere fact that a long distance company chooses to reimburse new customers for the PIC change charge does not mean that the IXC recovers that cost by charging higher per-minutes rates. In CBT’s view, an IXC’s decision to pay the PIC change charge on behalf of customers is simply a marketing tool employed by the company to attract customers and should be viewed as a cost of doing business. CBT would also point out that its data suggests that IXCs’ practice of reimbursing customers for PIC change

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<sup>11</sup> Id. at 5.

<sup>12</sup> See Telecommunications Research and Action Center’s Web Pricer service at [www.trac.org](http://www.trac.org).

charges is on the decline, despite CompTel's assertion that it is "standard long distance industry practice."<sup>13</sup>

CompTel also fails to produce evidence to support its allegation that the \$5 PIC change will have a damaging effect on competition once ILECs begin to enter the interLATA long distance market.<sup>14</sup> CompTel states directly that ILECs will engage in a "price squeeze" by requiring unaffiliated IXC's to pay a higher PIC change charge than their long distance affiliates. CompTel's claim is without merit. ILECs are required to and do charge all IXC's, both affiliated and not, the same tariffed rate for PIC changes. Unless and until the Commission chooses not to require ILECs to include the PIC change charge in their federally-filed tariffs, ILECs will not be able to give their long distance affiliates a competitive advantage and affect a "price squeeze" as suggested by CompTel.

**3. CompTel does not present sufficient facts to indicate that the circumstances within the long distance market have changed such that the Commission's findings in the MCI Order on this issue should be reversed**

CompTel asks the Commission to reevaluate the reasonableness of its PIC change charge policy based on the Commission's statement in the MCI Order, released in May 2000, that the Order should not discourage any party from initiating such a rulemaking proceeding.<sup>15</sup> In that Order, the Commission dismissed MCI's complaint based on its finding that MCI had failed to meet its burden of demonstrating that the \$5 PIC change charge was unreasonable.<sup>16</sup> As CompTel's petition is clearly premised on the same circumstances and data at issue in the MCI complaint proceeding, CBT asserts that a reexamination of the Commission's PIC change charge policies is premature at this time. CompTel has presented no new evidence to support its claims that the \$5 PIC change charge is in excess of costs or is unreasonable. Moreover, CompTel has

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<sup>13</sup> CompTel Petition at 5.

<sup>14</sup> Id.

<sup>15</sup> MCI Order at ¶ 2.

<sup>16</sup> Id. at 14.



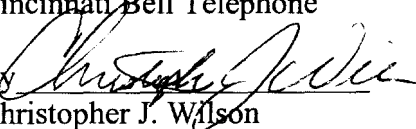
not demonstrated how the long distance market has changed since the Commission's May 2000 MCI Order such that a rulemaking proceeding is warranted to reconsidered the issue.

### **CONCLUSION**

For the forgoing reasons, CBT urges the Commission to deny CompTel's petition requesting that the Commission initiate a rulemaking proceeding to reexamine the Commission's policies concerning the federally tariffed \$5 PIC change charge safe harbor.

Respectfully submitted,

Cincinnati Bell Telephone

By 

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June 18, 2001